

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATHEAULEEN MASON, *et al.*,

Plaintiffs,

Case No. 05-73943

v.

Hon. John Corbett O'Meara

JENNIFER GRANHOLM, *et al.*,

Defendants.

**ORDER GRANTING IN PART AND DENYING
IN PART PLAINTIFFS' MOTION TO COMPEL**

Before the court is Plaintiffs' motion to compel, filed January 16, 2009. Defendants submitted a response on February 2, 2009; Plaintiffs filed a reply brief on February 4, 2009. The court held a hearing on February 5, 2009, and directed the parties to attempt to resolve their discovery issues. The parties have resolved most of the issues raised in the motion.

Still in dispute are Defendants' responses to Plaintiffs' interrogatory No. 24 and request for production No. 23. With respect to interrogatory No. 24, Defendants contend that the requested documents are located at the Archives of the Michigan Department of History, Arts and Libraries and are no longer in Defendants' possession. The court finds that Defendants are not required to produce documents that are not in their possession or control. Plaintiffs themselves may obtain the requested documents from the Archives.

With respect to request No. 23, the court ordered Defendant to produce departure reports in response to this request on December 10, 2008. Defendant does not want to produce all the departure reports requested, but only those pertinent to the first trial group. The December 10

order does not contain any such limitation. Accordingly, the court will direct Defendant to respond fully to request No. 23 within thirty days.

The parties also disagree as to whether the cost of reproducing audio tapes of interviews should be borne by the requesting party (Plaintiffs) or by Defendants as a sanction required by this court's order of February 14, 2007. Having reviewed the order, as well as the November 22, 2006 order referenced therein, the court finds that the cost of reproducing audio tapes is not clearly placed upon Defendants. The court declines to shift such costs to Defendants at this time.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's January 16, 2009 motion to compel [docket no. 382] is GRANTED IN PART and DENIED IN PART, consistent with this order.

s/John Corbett O'Meara
United States District Judge

Date: May 18, 2009

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, May 18, 2009, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager